

Leland E. Lutfy
United States Attorney
300 Booth Street, Room 2032
Reno, Nevada 89509
Telephone: 702 784-5439

John P. Lange
United States Department of Justice
Environment & Natural Resources Division
Indian Resources Section
999 18th Street, Suite 945
Denver, Colorado 80202
Telephone: 303 294-1900

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
Plaintiff,
WALKER RIVER PAIUTE TRIBE,
Plaintiff-Intervenor,
vs.
WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,
Defendants.

WALKER RIVER IRRIGATION DISTRICT,
Petitioner,
STATE OF NEVADA,
Petitioner-Intervenor,
vs.

CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD, W. DON MAUGHAN,
ELISEO M. SAMANIEGO, JOHN CAFFREY,
MARC DEL PIERO AND JAMES M. STUBCHAER,
Members of the California State Water
Resources Control Board,
Respondents,
CALIFORNIA TROUT, INC.,
Respondent-Intervenor.

In Equity C-125
Subfile C-125-B

COUNTERCLAIM
OF THE UNITED
STATES OF AMERICA

1 **COUNTERCLAIM**

2 COMES NOW the United States of America, by and through its
3 undersigned attorneys, on its own behalf and for the benefit of
4 the Walker River Paiute Tribe, (hereinafter "the Tribe"), and
5 claims as follows:

6 **INTRODUCTION**

7 1. This counterclaim is made for the recognition of a
8 right to store water in Weber Reservoir for use on the lands of
9 the Walker River Indian Reservation, and for a federal reserved
10 water right to use water on lands restored to the Reservation in
11 1936. Such rights are in addition to the right to divert the
12 natural flow of the Walker River and its tributaries, awarded to
13 the United States in United States v. Walker River Irrigation
14 Dist., In Equity No. C-125.

15 **JURISDICTION**

16 2. Jurisdiction over this counterclaim is pursuant to the
17 continuing jurisdiction of this Court over the waters of the
18 Walker River and its tributaries in California and Nevada; and,
19 28 U.S.C. §§1345 and 1331, in that this action is brought by the
20 United States of America, on its own behalf and for the benefit
21 of the Tribe, and the matter in controversy arises under the
22 Constitution, laws or treaties of the United States.

23 **PARTIES**

24 3. Plaintiff, the United States of America, appears in
25 this case on its own behalf and for the benefit of the Tribe.
26 The Walker River Indian Reservation was established in 1859 with

1 a land base of approximately 320,000 acres. Lands originally a
2 part of the Reservation were restored to the Reservation on
3 September 25, 1936, pursuant to the Act of June 22, 1936, 49
4 Stat. 1806-07.

5 4. Counter defendants are all water users on the Walker
6 River and its tributaries as set forth in the Final Decree.

7 **GENERAL ALLEGATIONS**

8 5. Counterclaimant, United States of America, hereinafter
9 referred to as the United States, currently has the right to use
10 the direct flow of the waters of the Walker River and its
11 tributaries in the amount of 26.25 cubic feet per second with a
12 priority date of November 29, 1859, to irrigate 2,100 acres of
13 land on the Walker River Reservation. See Decree entered in 1936
14 in United States v. Walker River Irrigation Dist., C-125, as
15 amended, pursuant to the writ of mandate of the Circuit Court of
16 Appeals, Ninth Circuit, in 1940.

17 6. Weber Reservoir is a federally-constructed reservoir
18 located on the Reservation with a storage capacity of
19 approximately 13,000 acre feet. The reservoir was practically
20 completed in 1935, although floodgates were added in 1937. The
21 United States, for the benefit of the Tribe, is entitled to store
22 water from the Walker River in Weber Reservoir for all purposes
23 recognized under federal law including but not limited to
24 irrigation, stock watering, fish and wildlife, and domestic uses.

25 7. By the use of Weber Reservoir to store water, the Tribe
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27
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1 can irrigate more than the 2,100 acres which it is entitled to
2 irrigate under the terms of the Final Decree.

3 8. The Act of June 22, 1936, 49 Stat. 1806-07, authorized
4 the Secretary of the Interior to set aside certain lands as an
5 addition to the Reservation. In accordance with the legislation,
6 by Order dated September 25, 1936, the Secretary restored to the
7 Walker River Indian Reservation approximately 167,460 acres.

8 9. The United States, for the benefit of the Tribe, is
9 entitled to use water from the Walker River on the restored lands
10 of the Reservation for all purposes recognized under federal law
11 including but not limited to irrigation, stock watering, fish and
12 wildlife, recreation and domestic uses.

13 10. Paragraph XIV of the Final Decree provides that this
14 Court retain jurisdiction for modification of this decree.

15 **FIRST CLAIM FOR RELIEF**

16 11. Paragraphs 1-10 are incorporated herein as if fully set
17 forth again in this paragraph 11.

18 12. The United States, for the benefit of the Tribe, is
19 entitled to store water from the Walker River in Weber Reservoir
20 for all purposes recognized under federal law. The right to
21 store water in Weber Reservoir has a priority date of April 15,
22 1936.

23 **SECOND CLAIM FOR RELIEF**

24 13. Paragraphs 1-12 are incorporated herein as if fully set
25 forth again in this paragraph 13.

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14. The United States, for the benefit of the Tribe, is entitled to use water from the Walker River on the restored lands of the Reservation for all purposes recognized under federal law. The restored lands of the Reservation are entitled to a federal reserved water right as of the date of restoration.

15. The United States, for the benefit of the Tribe, is entitled to water rights for the restored lands in addition to the rights now recognized for use on the lands of the Reservation under the Final Decree.

WHEREFORE, counterclaimant, on its own behalf and for the benefit of the Walker River Paiute Tribe, prays:

1. The Court, pursuant to its continuing jurisdiction under paragraph XIV of the Final Decree, reopen and modify the Final Decree to recognize the right of the United States, for the benefit of the Tribe, to store water in Weber Reservoir for use on the Reservation.

2. The Court, pursuant to its continuing jurisdiction under paragraph XIV of the Final Decree, reopen and modify the Final Decree to recognize the federal reserved right of the United States, for the benefit of the Tribe, to use water on the lands restored to the Reservation in 1936.

3. The Court grant such other and further relief as it

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1 deems proper.

2 DATED: July 22, 1992.

3 Respectfully submitted,

4 LELAND E. LUTFY
United States Attorney

5
6 By John P. Lange
7 JOHN P. LANGE
8 Attorney, Indian Resources Section
9 Environment and Nat. Resources Div.
10 United States Department of Justice
11 999 18th Street, Suite 945
12 Denver, Colorado 80202

13 Telephone: (303) 294-1900

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CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of July, 1992, served a true copy of the UNITED STATES OF AMERICA'S MOTION FOR LEAVE TO FILE COUNTERCLAIM and COUNTERCLAIM OF THE UNITED STATES OF AMERICA by placing same in the U. S. mails, postage prepaid, addressed as follows:

Shirley A. Smith, Esq.
Asst. U. S. Attorney
300 Booth Street, Room 2031
Reno, NV 89509

Richard R. Greenfield, Esq.
Field Solicitor's Office
Department of the Interior
Two N. Central Ave., Suite 500
Phoenix, AZ 85004

Larry C. Reynolds, Esq.
Deputy Attorney General
State Engineer's Office
123 West Nye Lane
Carson City, NV 89710

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, CA 89706

Jim Weishaupt
Walker River Irrigation
District
P. O. Box 820
Yerington, NV 89447

R. Michael Turnipseed, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

James T. Markle
State Water Res. Control Bd.
P. O. Box 100
Sacramento, CA 94814

Scott McElroy, Esq.
Jeff J. Davis, Esq.
Greene, Meyer & McElroy
1007 Pearl Street, No. 240
Boulder, CO 80302

John Kramer
Department of Water Resources
1416 Ninth Street
Sacramento, CA 94814

John Davis, Esq.
P. O. Box 1646
Tonopah, NV 89049

Richard E. Olson, Jr.
Classen and Olson
P. O. Box 2101
Carson City, NV 89702

Rodger Johnson
Water Resources Control Bd.
State of California
P. O. Box 2000
Sacramento, CA 95810

Ross E. De Lipkau
P. O. Box 2790
Reno, NV 89505

James W. Johnson, Jr.
1600 W. Holcomb Lane
Reno, NV 89511-9440

Gary Stone
290 South Arlington
Reno, NV 89510

Roger Bezayiff
Chief Dep. Water Commissioner
U.S. Bd. Water Commissioners
P. O. Box 853
Yerington, NV 89447

Gordon H. DePaoli, Esq.
Woodburn, Wedge & Jeppson
P. O. Box 2311
Reno, NV 89505

1 Linda A. Bowman, Esq.
2 Vargas & Bartlett
3 201 W. Liberty St., Suite 300
4 P. O. Box 281
5 Reno, NV 89504

6 Mary Hackenbracht, Esq.
7 Department of Justice
8 State of California
9 2101 Webster St., 12th Floor
10 Oakland, CA 94612-3049

11 Margaret Ann Twedt, Esq.
12 Deputy Attorney General
13 State of Nevada
14 Division of Water Resources
15 Capitol Complex
16 123 Nye Lane
17 Carson City, Nevada 89710

18 George N. Benesch, Esq.
19 Benesch & Fermole
20 427 Ridge Street
21 Post Office Box 3197
22 Reno, Nevada 89505

23 Matthew R. Campbell, Esq.
24 David E. Moser, Esq.
25 McCutchen, Doyle, Brown &
26 Enerson
27 3 Embarcadero Center
28 San Francisco, CA 94111

Dwight F. H.